

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOR THE FOURTH DIVISION**

Court File No.: 07-CV-3391 PJS/JJG

In re:

Elliot & Callan, Inc.,
a Minnesota corporation,

Plaintiff,

v.

DEFENDANT'S ANSWER

Luther Allan Crofton,

Defendant.

Defendant Luther Allan Crofton ("**Crofton**"), for his Answer to Plaintiff Elliot & Callan, Inc.'s ("**E & C**") Complaint, states and alleges as follows:

1. Unless otherwise admitted or qualified herein, Crofton denies each and every allegation of E & C's Complaint.
2. Crofton is without sufficient information to admit or deny the allegations in paragraph 1 of the Complaint, and therefore denies same and puts E & C to its strictest proof thereof.
3. Crofton admits the allegations in paragraphs 2, 6, 8, 9, 10, 12, 14, 15, 17 and 18 of the Complaint.
4. The allegations contained in paragraphs 3, 4, and 5 of the Complaint are legal conclusions to which no response is required.
5. Crofton specifically denies the allegations in paragraphs 11, 19, 20, 21, and 22 of the Complaint.

6. With respect to paragraph 7 of the Complaint, Crofton admits that Sandra Crofton Construction Company ("SCC") purchased certain business assets from E & C, and as part of the consideration for the purchase, executed and delivered to E & C a promissory note dated June 4, 2004 in the original principal amount of \$631,535.00, but denies the remaining allegations and puts E & C to its strictest proof thereof.

7. With respect to paragraph 13 of the Complaint, Crofton admits that SCC has repaid him amounts due, but denies the remaining allegations and puts E & C to its strictest proof thereof.

8. With respect to paragraph 16 of the Complaint, no response is necessary given that the paragraph is a mere recital of previous paragraphs in the Complaint.

AFFIRMATIVE DEFENSES

9. This Court lacks personal jurisdiction over Crofton.
10. This Court lacks subject matter jurisdiction over this matter.
11. Venue is improper in this Court.
12. E & C fails to state a claim upon which relief can be granted.
13. E & C's claims are barred by res judicata.
14. E & C's claims fail under the doctrines of estoppel, waiver, unclean hands and/or laches.
15. E & C's claims are barred in whole or in part by lack of consideration, unenforceability, consent, knowledge and acquiescence.
16. E & C's claims are barred because Crofton gave new value for the benefit of SCC.
17. E & C's claims are barred because SCC made the transfers in the ordinary course of business.

18. As a separate and alternative defense to E & C's Complaint, Crofton alleges that the claims contained in the Complaint may be barred by any or all of the affirmative defenses contemplated by Rule 8(c) of the Federal Rules of Civil Procedure or any Federal and/or Minnesota common law. The extent to which E & C's claims may be barred by one or more of said affirmative defenses not specifically set forth above, cannot be determined until Crofton has had the opportunity to complete discovery, and Crofton, therefore, incorporates all such affirmative defenses as if fully set forth herein.

WHEREFORE, Crofton prays that the Court will grant the following relief:

1. That E & C take nothing from its claims against Crofton and that E & C's claims be dismissed with prejudice;
2. That Crofton be awarded its attorneys' fees and costs; and
3. For such other and further relief the Court deems just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: August 24, 2007

By /s/ Chad A. Kelsch
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ACKNOWLEDGMENT

Defendant, by his attorneys, acknowledges that sanctions may be imposed under Minn.
Stat. § 549.211

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

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